



Time to talk: Who will own the family woodlands?

“It concerns me that fewer and fewer families are able to keep their forest lands,” said U.S. Forest Service Chief Gail Kimbell. “Private forests provide significant public benefits and family forest owners are the key to maintaining these benefits for future generations.”

The subdivision and loss of family forests alarms the National Association of Conservation Districts as well. That’s why the timing of this insert for Forestry Notes is no coincidence. Thanksgiving and the winter holidays are family times and we’re addressing family matters. We’re addressing family woodlands.

NACD and the Forest Service want landowners and those who serve them to be aware of the basic steps to take now to secure family woodlands for generations to come. More often than not, family relationships are also secured in the process.

“All too often we hear about family members who just aren’t talking to each other,” said Brett Butler, PhD, Forest Service Family Forest Research Center. He’s talking about the lack of discussion between owners and heirs about the future of family woodlands.

Others familiar with estate planning for family lands agree: the biggest obstacle to securing family legacies with their woods is communication. People just don’t get around to talking because just thinking about life after oneself or a parent is gone is hard

“When I think of my net worth, I don’t include the forestland because I think of that as belonging to future generations.”

Steve Graham
New York woodland owner



to do.

Though the consequences of ignoring estate planning will be significant, the consequences aren’t necessarily the motivator for getting things done. It’s the feeling of knowing they’re doing things right by their family and their woods that drives most owners onward. To get started on the journey, they or someone who advised them got things focused on the destination, the legacy of their woods and family name.

There’re simple questions to get conversations and

planning started: “What will these woods look like in a generation or two? Who will own it? What will they be doing with it?”

Responsible advisors ask landowners these questions when dealing with stewardship and conservation. Landowners can ask these questions themselves. If the answers come easy, the next questions are: “Do the heirs know the plan?” And, “Is it backed up with legal ink?” If the answers come hard, or are unknown, then it’s an at-risk woodland being dealt with.

Whether you’re an advisor, landowner, or a combination of both, take the time through Thanksgiving and the holidays to ponder the future of family forests.

Checklists

For the forester or advisor

- Study up on estate and succession planning options.
- See what your local SAF chapter, Extension Service, and state forestry division is doing on the planning issue.
- Look for training and workshops for you and your peers. If no workshops exist, make a contact with someone who might organize a session.
- Develop relationships with local experts: extension educators, estate lawyers, tax accountants, facilitators.
- Use websites, email lists, newsletters, and newspapers to rebroadcast the crisis of forest loss. Encourage communication and knowledge around estate planning to slow the problem.
- Begin to council landowners, local conservation boards, and anyone else who might be part of the solution to keeping family lands in family hands.

For the landowner

- Take time alone. Write out goals for the land a generation and more down the road.
- Make a list of heirs, and their heirs.
- Set aside an hour or two, maybe out in your favorite spot in the woods. Share your goals and lists with co-owners. Try to agree on heirs and goals.
- Get informed. Consult with your forester, tax accountant, and estate lawyer about realizing your goals.
- Talk with heirs, to be sure they’re ready for the responsibility you’ll be asking of them, or sparing them from, if that’s the case. They may not want to be spared from the “land burden.”
- Finalize with legal documentation. Communicate them so everyone knows.

Securing family legacies on your woodland

An appendix for stewardship plans

The lifespan of a tree is often much longer than our own lifespan. The forest stewardship plan works on this long timeline, as must those aspects of a landowner's estate plan that deal with their woods. Who will fulfill the forest management goals set today for the land? Will the family's estate plan let ownership transition easily, without heavy taxes, family dissension, or other burden?

Though owners must make their own choices about the future of their woods, it all starts with basic questions:

- Who will own it next?
- How will it be managed?
- Can it ever be sub-divided and developed?

Once these basic questions are addressed, there are several options to help landowners get what they want from succession and estate planning. The more common choices identified by the U.S. Forest Service follow. Sometimes, one shoe fits all. Other times, owners and families combine and customize these options to fit their personal goals and situation.

Do nothing: Few advisors, if any, support the do nothing option when it comes to estate planning. While doing nothing spares one's time, expense, and worry in the short term, the long-term implications can be complex for a surviving spouse, or divisive among heirs. The "do-nothing" option is the choice that leaves the estate and the forest most at risk.

Will: A last will and testament is the simplest and least expensive method of active estate planning. While traditional wills divide assets such as stocks and bonds equally among heirs, a forest is a somewhat nontraditional part of an estate. The forest holds an economic function, but also provides environmental benefits, too, such as being a source of clean air, clean water, and wildlife habitat. A subdivided forest loses its value as a functioning ecosystem if the use of smaller, separately owned parcels changes over time. Balancing fairness to heirs with other goals may require a serious discussion.

Sell or give the forest to heirs before death: Some family forest landowners prefer to sell or give portions of their estate to their heirs before death to mitigate estate taxes. A basic principle here is to first develop a shared understanding of how the land will be used. Page 3 has some quick math on gifting.

Family partnerships: Some families choose to put their forests in family partnerships or qualifying conservation trusts. This helps keep the forest together as a function-

ing ecosystem. How the family land and the partnership are managed can be set by the owner when establishing the partnership, or the decisions can be shared among the owner and heirs.

Limited liability company: Family members can join together to form a Limited

Liability Company (LLC) around the family forest. The LLC can be member-managed (all) or manager-managed (for instance, parents make decisions, while children share ownership). All the members of the LLC become "shareholders" in the forest, similar to owning stock in a family corporation. Unlike stocks, however, the shares can't move out of the family. Conservation easement: A conservation easement lets landowners maintain ownership of the land, allowing them to live on it and manage it according to the easement. Typically, what they promise is to keep the land intact by giving up subdivision or development rights. Easements can be permanent or for a specified period of time (15 years, for instance). The easement can be donated, sometimes with property tax offset benefits. Often, easements are bought by another party, providing the landowners some financial security as well as peace of mind regarding the future integrity of their forest.

Land trust: Land trust organizations exist

across the country. They can be found at the national or State level, or may be managed by friends and neighbors in small communities as well. Land trusts often purchase conservation easements on family forests, purchase forest outright, or have forest donated to them from an estate.

Public landholders: A curious fact is that land adjacent to or within the proximity of conserved land is more at risk for development than other rural land. Forest owners abutting or near national forests or other conserved land can consider donating their land, donating with stipulations, or selling their land to the public landholder. This choice has the environmental benefit of keeping large, contiguous forests intact so that they may continue their environmental function.

"Good planning to maintain land through many generations requires a long-view that extends far beyond an individual's life."

Thom McEvoy
*University of Vermont
Extension forester and
author of Positive Impact
Forestry and Legal
Aspects of Owning and
Managing Woodlands*

For all the options out there and others not touched on, there may be an exact fit for you, or room to negotiate an agreeable outcome from a combination of choices. It's important—very important—to remember that the course for the future is charted by today's owner or co-owners. The decisions are theirs to make in order to secure the vision they hold for their land and family legacy.

Detailed explanations of the options listed can be found at: <http://www.na.fs.fed.us/stewardship/estate/estate.shtml>.

Would you recommend others do forest estate planning?

Bill & Ruth Park (PA): I think it's very important, if you're interested in keeping it undeveloped and keeping it as forestland. In the past we've lost a lot of forestland. With the current development, we're losing more. We need to be responsible stewards of the forests. We can do lots of harm to the land if we're not careful.

Miles Schulze (TX): That's the easiest question. If you don't do it the state will do it for you and it's taken totally out of your hands. When you think of estate planning you think of a formal document. The real work is the planning for what is going to go into that document: what your wishes are, family considerations, what the taxes are, etc.

Ed & Carol Nigl (AZ): I would. I think all parents want to treat their children fairly. You should formulate your will to capture their different personality types and attitudes and values.

Mike Greenheck (MN): Of course I would recommend estate planning. It eliminates the possibility of losing the property or taking it out of the family. A lot of my family members do a lot of work on the forest. For me, the work we're putting in now is going to add additional value down the line. Estate planning is important because you set the future. Forests take a long time. Estate planning enables you to think long term. Forests need long-term processes. Estate planning goes along with that.

For the full interview, "Forest landowners speak out about managing land, estate planning" visit <http://www.na.fs.fed.us/nanews/archives/2007/apr/landownerspeak/landownerspeak.html>.

Five common mistakes to avoid ...

If it's working, don't break it apart

Though it's probably happened, it's hard to imagine a possession like a tractor being willed in parts to four children. One gets the wheels, one the engine, one the seat and transmission, and the fourth gets everything remaining.

Would splitting up woodlands be any smarter? The forest functions as an ecosystem, and for timber management, recreation, and other benefits, intact forests are needed. It's a common mistake though for an owner to look at their woods as they would their savings account, stocks, and bonds—as assets to be divided equally among heirs.

Estate and succession planning strategies that keep land intact protect it best from being lost.

“They know I'm giving it to them and they'll do the right thing”

Often, knowledge of a persons estate and succession plans is assumed. If discussions don't

happen, disagreements or worse can happen among heirs. The common solution is to convey wishes, allow questions to be asked, but ultimately, for the owner to make decisions and give heirs the chance to understand and respect the owners' choices.

“All our children want the same thing”

In interviews with adult children of forest owners, sons and daughters differ in opinion on why they value family woodlands. Their intentions for managing those lands after the property passes on also differ. It's wrong to assume children want the same thing, though it can also be short-sighted to think they'll differ so greatly that a discussion, today, would be impossible. The discussion will happen. It's best to have it when the landowner's guidance and decisions can still be had.

If you want it in family, play out all scenarios

This is the cold business side of accumulating and protecting fam-

ily wealth and land legacies. Heirs are often looked at as sons or daughters and their spouses. Life happens though, and divorce or a “right of survivorship” situation can take land out of family hands. Some strategies see land or land shares revert to blood relatives in the event of an adult child's death. Or ownership passes to the child's children.

“I'm worth how much!?”

This is the ‘land rich, penny poor’ scenario and it happens often. Landowners simply don't figure the value of their forest land into their wealth. Enough acreage with high development potential can mean sizeable estate taxes for heirs. Taxes in the tens or hundreds of thousands of dollars are not uncommon. Sale of land out of family hands is often the solution for covering debt that's left. Get land appraised for its full development value, then run the estate tax calculations. Add probate and legal fees to the tax sum to understand all the financial liabilities the transfer of the estate will incur.

What will Grandma do?

- 1940 Great Grandma and Great Grandpa own a 100 acre woodlot. They raise Grandma and her three brothers.
- 1960 Grandma and her three brothers inherit the family land. It's passed on with just a store-bought will and a sketch. The sketch of the woodlot shows the 100 acres divided in four 25-acre parcels, one in each child's name. The children argue that the parcels are not of equal value, but accept the sketch rather than going to court.
- 1961 Each sibling is approached by developers. Two of grandma's brothers sell their 25-acre parcels. The family home is razed and the sugarbush is paved over, too.
- 1976 Grandma's third brother splits a two acre lot off for a home. He subdivides and divests of his remaining 23 acres to finance construction.
- 1992 The third brother sells his home at retirement. Grandma owns the last 25 acres of family land.
- 2008 Grandma (widowed) is ready to begin estate and succession planning for the last of the family woods. She assumes her two children would rather she sell it and give them the money, though she hasn't asked. She has 6 grandchildren and worries that their life in the suburbs has disconnected them from nature.

What will Grandma decide to do?

Conservation Easement Donations and Federal Income Tax - Donation of a conservation easement on land brings with it real tax benefits. For Federal income tax purposes, qualified landowners who donate easements can deduct the value of the easement from their adjusted gross income. The deduction can be up to 50% of adjusted gross income per year and spread over multiple years. State income tax credits may also apply.

A simple example:

'08 household adjusted gross income - \$80,000
 Conservation easement value - \$40,000
 New Federal tax adjusted gross income - \$40,000

Gifts and Federal Taxes - A parent can give up to \$12,000 per year in tax-exempt gifts. The gift doesn't have to be cash. It can be an undivided interest (shared ownership) in forest land. The following example is highly simplified. Other arrangements can further discount the land, to the benefit of gifting strategies. Discussion needs to be had with a tax consultant, estate lawyer and heirs before doing this, but here's some math for a couple with two children:

- Forest land value - \$384,000
- Gift allowance - \$12,000/per parent/per year/per child

- Number of children - 2
- Amount of gift benefit per year (\$12,000 X 2 parents X 2 children) - \$48,000
- Value of gift after 8 years of husband and wife gifting to 2 children (8 years X \$48,000/year) - \$384,000.
- Value of land in the parents' estate after 8 years - \$0
- Estate tax on forest land - \$0

Estate Tax Exemption - The estate tax exemption is a tax schedule passed by Congress. If the total value of your estate assets is less than the exemption amount, no estate tax is charged to your heirs. The estate tax rate climbs to 45% of the value of all assets above the estate tax exemption limit.

Year	Estate Tax Exemption
2006-08	\$2 million
2009	\$3.5 million
2010	No Federal estate tax
2011-beyond	\$1 million

Forest land can be valuable. In the example on gifting, the value of an estate can be reduced by \$384,000 by transferring ownership to heirs while alive. If that \$384,000 was the total taxable portion of the surviving owner's estate, absent other strategies to remove the forest value, the heirs would face a \$116,360 estate tax burden.

Where it's known, it's shown

Family forests do the public good—where that's understood, it's also understood that stemming forest loss involves both individual and public action. Here's a short list of some best practices states, counties, and towns have taken to support working family lands across America:

• **Right to practice forestry** -- All states have some form of Right to Farm laws that protect farming rights. Some counties and towns strengthen these laws for local needs. The laws protect farmers from lawsuits by neighbors for nuisance and from anti-nuisance ordinances and other controls that would harm farming. Forestry operations are akin to farming and many governments have enacted Right to Practice Forestry laws as well. Sometimes, these laws include the requirement for abutters to be notified when purchasing property that they are moving next to managed forest. The notification is signed with the deed papers at closing.

• **Forests: crop or not?** -- In many states, forest income is taxed at the same rate as more profitable extraction endeavors, like coal, oil, or natural gas mining. Farm income is not taxed at these high rates. Where forest income tax structures mirror or combine with farm income laws, forest owners have fewer financial obstacles to managing and keeping their land. Timber Severance taxes increase the cost of ownership and make it harder for forest owners to

effectively manage their forest.

• **Beyond Current Use and other tax abatements** -- In most states, landowners receive a reduced property tax rate for keeping their forest as open space. At least one state took that a step further. Under their laws, forest owners who are managing their land as working forests, with a stewardship plan in place, receive additional property tax reductions beyond the simple, unmanaged current use reduction. This reduces landowner burden, increases stewardship, and increases the likelihood that forests will be maintained as open space.

• **Cost of community services** -- Local governments who figure out the cost of their community services for different land uses tend to support forests ownership in their planning and zoning. Cost of community services typically hover around a 3 to 1 ratio when comparing service costs for residential lots to costs for open forest acreage. As an example, for every dollar West Greenwich, RI received in property tax revenue (1995), the town spent:

- \$1.46 in town services per residential acre
- \$0.46 in town services per acre of open space.

• **Planning and zoning** -- Master plans and zoning can help towns balance growth and conservation goals. They can redistribute the pattern of development, or specify such things as conservation or cluster development.

“We put a conservation easement on it and then established an LLC. We have four children and gave the LLC to the children. They all now have equal shares and own it collectively. However, they must comply with the easement.”

Don and Sharon Schiltz
Montana woodland owners



Transportation, schools, and other considerations may factor in, or compete with, family forest conservation. It's important to understand that each decision has the potential to put development pressure on a forest, or conversely, devalue a landowner's property.

• **Local forestry regulation** -- This last one isn't a best practice at all, it's the opposite. Increasingly, community ordinances regulating forestry operations are appearing. Because federal and state regulations already exist, community ordinances often don't add value. They do cause two problems, however. First, the community needs someone to enforce forestry ordinances. If they don't contract or hire that expertise, the job usually falls to the code enforcement officer, whose knowledge is in building construction, not ecology or forestry. Second, profit margins for landowners are small, yet working forests are often enough to pay the taxes and keep land after retirement. Once land loses value as working forest, it's more likely to be sub-divided and developed.

Programs & Resources

Training, information and local leads

Success in getting families started on estate and succession planning for their forests is equal parts motivation and information. Resources for training, workshops, self-study, and local leads on estate planning follow. These are but a sampling:

- U.S. Forest Service Northeastern Area hosts a web site dedicated to estate planning: <http://www.na.fs.fed.us/stewardship/estate/estate.shtml>
- The Green Valley Institute hosts a decision tree for the early steps of succession planning: http://www.greenvalleyinstitute.org/landowners_protecting.htm

- Timber tax and estate planning information is available at <http://www.timbertax.org/estate/estate.asp#>
- Mediation can provide a safe, facilitated family discussion. USDA supported agricultural mediation programs offer free services to farmers, and often woodland owners too. Find local contacts through the Coalition of Agricultural Mediation Programs: <http://cahe.nmsu.edu/ces/nmamp/camp.html>
- Many Cooperative Extension Services deal with estate planning for farms and forests. The USDA hosts a nationwide directory of Extension sites: <http://www.csrees.usda.gov/Extension>



- Oregon State University's Ties to the Land offers an estate planning curriculum and workbook. Trained local facilitators offer workshops to landowners: <http://www.familybusinessonline.org/resources/ttl/home.htm>

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